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Traditional or customary practices affecting the health of women

Report of the Secretary-General

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I. Introduction

1. In resolution 52/99 of 12 December 1997 on traditional or customary practices affecting the health of women and girls, the General Assembly recalled previous resolutions and decisions that had been adopted by it, the Commission on Human Rights and the Subcommission on Prevention of Discrimination and Protection of Minorities and the relevant reports of the Special Rapporteur of the Subcommission on Prevention of Discrimination and Protection of Minorities and of the Special Rapporteur of the Commission on Human Rights on violence against women. It also recalled the seminars on traditional practices affecting the health of women and children in Burkina Faso in 1991 and Sri Lanka 1994, the pronouncements of various recent world conferences with respect to traditional or customary practices affecting the health of women and girls, the Plan of Action for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children, the Convention on the Elimination of All Forms of Discrimination against Women, general recommendation 14 of the Committee on the Elimination of Discrimination against Women, the Convention on the Rights of the Child, and the work of the Inter-African Committee on Traditional Practices affecting the Health of Women and Girls (IAC).

2. Reaffirming that such practices constitute "a definite form of violence against women and girls and a serious form of violation of their human rights" and expressing concern at "the continuing large-scale existence of such practices", the Assembly welcomed the ongoing efforts by Member States, the United Nations system and non-governmental and community organizations to eliminate such practices and to raise awareness of them.

3. The Assembly invited the Commission on the Status of Women to address the issue of harmful traditional or customary practices during its review of the critical areas of concern – namely, "Violence against women", "The girl child" and "Human rights of women" at its forty-second session, in 1998, and "Women and health" at its forty-third session, in 1999. The Commission on Human Rights was also invited to take up the issue at its fifty-fourth session, in 1998.

4. The Assembly called on States to implement their international commitments under the Vienna Declaration and Programme of Action,[1] the Beijing Declaration[2] and Platform for Action,[3] the Programme of Action of the International Conference on Population and Development[4] and the Plan of Action for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children.[5] They were also called on to ratify human rights treaties, including the Conventions on the Elimination of All Forms of Discrimination against Women[6] and the Rights of the Child,[7] implement their obligations under those treaties, and include specific information on measures taken to eliminate traditional or customary practices harmful to the health of women and girls in their reports to the Committees established under those instruments. Recommendations concerning awareness-raising, education, information dissemination, training and the development and implementation of national legislation and policies were also made. States were called on to cooperate closely with the Special Rapporteur of the Subcommission on Prevention of Discrimination and Protection of Minorities on traditional practices affecting the health of women and children and to submit information on such practices, with a view to enabling her to assess the progress and obstacles encountered in applying the Plan of Action for the Elimination of Harmful Traditional Practices.[8] Cooperation with relevant United Nations entities, including the World Health Organization (WHO), the United Nations Children's Fund (UNICEF), the United Nations Population Fund (UNFPA), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), and with non-governmental and community organizations was also advocated. The Assembly requested the Secretary-General to report to it at its fifty-second session on the implementation of the resolution.

5. The present report describes steps that have been taken to implement the resolution, which is the first adopted by the General Assembly to address traditional or customary practices affecting the health of women and girls since 1954. In that year it had adopted resolution 843 (IX) on the status of women in private law: customs, ancient laws and practices affecting the human dignity of women. The present report, which is the first report to be submitted by the Secretary-General to the General Assembly on the subject, is based on information from studies and reports of the bodies of the United Nations, and on documents prepared by Member States and organizations of civil society. Emphasizing more recent relevant activities, the report provides an overview of steps that have been taken by the United Nations system to help eliminate traditional or customary practices that are harmful to women and girls and to raise awareness of the issue. Recent actions of Member States and non-governmental and community organizations are also examined, and recommendations are made to Governments, the United Nations system and non-governmental and community organizations.

II. An overview of action taken by the United Nations system

6. Harmful traditional practices affecting the health and well-being of women and girls have been addressed since the 1950s by several intergovernmental bodies of the United Nations. The Commission on the Status of Women considered customary laws and practices harmful to the health of women during the 1950s, and in 1952, the Economic and Social Council, acting on a recommendation of the Commission on the Status of Women, called on Member States to "take immediately all necessary steps with a view to abolishing progressively all customs which violate the physical integrity of women, and which thereby violate the dignity and worth of the human person as proclaimed in the Charter and in the Universal Declaration of Human Rights".[9]

7. More sustained attention and consideration was directed at the issue during the 1970s and 1980s: the 1975 World Health Assembly discussed the subject, and a seminar on traditional practices affecting the health of women and children was convened by WHO in Khartoum in 1979. The recommendations of the seminar[10] suggested, *inter alia*, that Governments should establish national commissions to coordinate activities directed at eradicating female circumcision and should intensify education in that regard. Research undertaken within the framework of the Subcommission on Prevention of Discrimination and Protection of Minorities, WHO and other United Nations bodies during the 1980s provided the background to growing opinion that harmful traditional practices, including female genital mutilation, constituted forms of violence against women as well as of human rights issues and could not be justified on grounds of tradition or culture.

8. More recently, harmful traditional practices, including female genital mutilation, have been brought to the attention of the international community through the efforts of the United Nations, its specialized agencies, funds and programmes, and civil society, including non-governmental organizations and the media. Information on the harmful effects of certain traditional or customary practices, which are now recognized as issues relating to the status and human rights of women and the girl child, has also been made available. In April 1997, WHO, UNICEF and UNFPA issued a joint statement on female genital mutilation. The statement expressed the common purpose of the three organizations in supporting the efforts of Governments and communities to promote and protect the health and development of women and children and stressed their complementary strengths in and focus on strategies to eliminate female genital mutilation.

A. United Nations global conferences

9. Traditional practices harmful to women and the girl child were addressed within the context of a number of United Nations world conferences which took place during this decade. The Vienna Declaration and the Programme of Action, adopted at the 1993 World Conference on Human Rights,[11] expanded the international human rights agenda to include gender-based violence, including harmful traditional practices. The Conference report recognized that "gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice, are incompatible with the dignity and worth of the human person and must be eliminated"[12] and stressed the importance of working towards the eradication of harmful traditional or customary practices, and urged Governments to take effective measures to combat, *inter alia*, female infanticide.[13]

10. The Beijing Declaration[14] and Platform for Action,[15] adopted by the Fourth World Conference on Women in 1995, addressed the issue of harmful traditional practices within several of the critical areas of concern. Consistent with the Declaration on the Elimination of Violence against Women,[16] adopted by the General Assembly in 1993, it defined violence against women to include dowry-related violence, female genital mutilation and other traditional practices harmful to women[17] and also included female infanticide and prenatal sex selection as acts of violence against women. The harmful effects of certain traditional and customary practices on women and the girl child were emphasized, and Governments were requested to take legal measures to eliminate "practices and acts of violence against women such as female genital mutilation, female infanticide, prenatal sex selection and dowry-related violence".[18]

11. The specific effects of certain traditional practices on the girl child are also addressed, with the Platform suggesting that among the reasons men outnumber women in certain areas of the world are harmful attitudes and practices, such as female genital mutilation, son preference (which results in female infanticide and prenatal sex selection), early and child marriage and discrimination against girls in the allocation of food.[19] In this context, the Platform makes concrete suggestions to Governments of actions to eliminate negative cultural attitudes and practices against girls.[20]

12. The Programme of Action adopted at the 1994 International Conference on Population and Development (ICPD)[21] urged Governments to take steps to eradicate the practice of female genital mutilation and to protect women and girls from such unnecessary and dangerous practices.[22]

B. Human rights treaty bodies

13. A number of the bodies established under United Nations human rights treaties have addressed traditional practices affecting the health of women and girls in their consideration of States parties reports, their concluding comments, or observations on those reports and their general recommendations or comments.

14. The Committee on the Elimination of Discrimination against Women, established under the 1979 Convention on the Elimination of All Forms of Discrimination against Women,[23] pays particular attention to the measures taken by Governments to eliminate prejudices and discriminatory practices that are rooted in the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. Although information contained in States parties' reports with regard to traditional or customary practices affecting women and girls has not been extensive, where States parties appear to have such practices, specific recommendations to eliminate them are made by the Committee in its concluding comments. For example, reference is made to harmful traditional practices in the concluding comments relating to Senegal,[24] Uganda,[25] Ethiopia,[26] Zimbabwe,[27] South Africa,[28] United Republic of Tanzania[29] and Nigeria.[30] In these comments the Committee has expressed its dismay at the persistence of certain discriminatory practices, including, *inter alia*, female circumcision, polygamy, *lobola* (bride price), witch burning, food taboos, inhumane rites undergone by widows, one-sided repudiation, and unequal subsistence rights and shares. The Committee has condemned such practices as gravely offending the dignity of women, impeding the advancement of women, and affecting the health of future generations. The Committee has also made reference to the particular vulnerability of rural women to these practices. Recommendations to States parties have included the organization of public information campaigns on this issue, the strengthening of existing programmes to combat traditional practices, and the review of family and customary laws with a view to eliminating customary laws and practices that impede gender equality and the empowerment of women. In the context of female genital mutilation, the Committee has recommended that assistance should be given to those who perform female genital mutilation to gain other sources of income.

15. In addition, at its ninth session in 1990,[31] the Committee adopted general recommendation 14 on female circumcision, in which it expressed concern about the "continuation of the practice of female circumcision and other traditional practices harmful to the health of women", and recommended that States parties "take appropriate and effective measures with a view to eradicating the practice of female circumcision", including collection and dissemination of data, provision of support to concerned women's organizations, organization of awareness-raising campaigns, incorporation of measures in public health-care policies and coordination with the United Nations system. General recommendation 19, concluded at the Committee's eleventh session in 1992,[32] concerning violence against women addressed, *inter alia*, forced marriage, dowry death, acid attacks and female circumcision. Traditional practices, include dietary restrictions for pregnant women, preference for male children and female genital mutilation, perpetuated by culture and tradition, were also recognized as potentially harmful to the health of women and children. In general recommendation 21,[33] concerning equality in marriage and family relations, the Committee also identified early marriage and motherhood as factors that can adversely affect the health of women and girls. The Committee is currently preparing a general recommendation on article 12 of the Convention (women and health), and it is expected that the recommendation will address the issue of female genital mutilation.

16. States parties to the Convention on the Rights of the Child[34] are obliged to "take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children",[35] and to protect children from injury, violence, abuse and maltreatment.

17. In its review of States parties' reports, the Committee on the Rights of the Child has frequently considered the issue of traditional practices. For example, in its consideration of the initial report of Ethiopia,[36] the Committee welcomed the establishment of the National Committee on Traditional Practices in Ethiopia to develop information and sensitization campaigns on all forms of harmful traditional practices affecting the health of women and children, but expressed concern at prevailing traditional practices and customs that hamper the implementation of the provisions of the Convention. The Committee encouraged the Government to continue its efforts to promote awareness and understanding of the principles and provisions of the Convention which it considered would contribute to the abolition of traditional practices, such as female genital

mutilation and early marriages, prejudicial to the health and well-being of children.

18. At its fifteenth session,[37] the Committee repeatedly expressed its deep concern at certain prejudicial traditional practices and customs harmful to the girl child, including early marriage, teenage pregnancy, dowry (in relation to Bangladesh), *trokosi* (ritual enslavement of girls which is practised in Ghana) and female genital mutilation, noting that such practices resulted in the deprivation of girls' rights to survival, health, nutrition and education. Concluding observations adopted at the fifteenth session raised the question of such practices with respect to Bangladesh, Ghana, Togo and Uganda, and recommended, *inter alia*, public campaigns to raise awareness and change the prevailing attitudes which allowed such practices to persist and the revision of legal measures.

19. At its sixty-first session, the Human Rights Committee, which monitors implementation of the International Covenant on Civil and Political Rights[38] noted, in its concluding observations relating to India's third periodic report,[39] the persistence of traditional practices and customs which was leading to women and girls being deprived of their rights, human dignity and lives, and impeding implementation of the Covenant. The Committee further pointed out that the existing legislative measures to outlaw child marriages, dowry and dowry-related violence and *sati* (self-immolation of widows) were not sufficient and expressed its concern at practices, including son preference, sex selective abortion, female infanticide, *devadasi* (where young girls are pledged for life to temples at an early age by parents in return for heavenly favours) and rape in marriage. The Committee's concluding observations on the fourth periodic report of Senegal[40] also referred to polygamy and female genital mutilation as practices deriving from traditional cultural attitudes. It also noted that female genital mutilation and early child birth contributed to the high rate of maternal mortality. The relationship between the high maternal mortality rate and early marriage and female genital mutilation was also raised in the Committee's concluding observations with regard to Sudan's second periodic report[41] where the Committee also raised concerns about the life-long negative impact of female genital mutilation on the girl child. The Committee's concluding observations on the initial report of Zimbabwe[42] also raised concerns about continued practices of *kuzvarita* (pledging of girls for economic gain), *kuripa ngozi* (appeasement to the spirits of a murdered person), *lobola* (bride price), female genital mutilation and early marriage.

C. Special Rapporteur on violence against women

20. The preliminary report submitted by the Special Rapporteur of the Commission on Human Rights on violence against women, Ms. Rhadika Coomeraswamy, to the Commission on Human Rights at its fiftieth session,[43] emphasized that traditional practices, including female genital mutilation, foot binding, male preference, gender difference in nutrition, early marriage, virginity tests, dowry deaths, widow burning, *sati* (self-immolation of widows), female infanticide and malnutrition, violated a woman's human rights. The report stated that "blind adherence to these practices and State inaction with regard to these customs and traditions have made possible large-scale violence against women",[44] and that "traditional practices should be construed as a definite form of violence against women which cannot be overlooked nor be justified on the grounds of tradition, culture or social conformity".[45] In her second report,[46] submitted to the Commission at its fifty-second session, the Special Rapporteur indicated that societal attitudes that suggested that girl children were a social and economic burden contributed to the incidence of harmful traditional or customary practices. She pointed out[47] that many international human rights instruments called on States to refrain from invoking any custom, tradition or religious consideration to avoid their obligation with respect to the elimination of all forms of violence against women, and suggested that Governments follow the recommendations contained in the Platform for Action adopted by the Fourth World Conference on Women.

D. Subcommission on Prevention of Discrimination and Protection of Minorities

21. The subject of traditional practices has been a concern of the Subcommission on Prevention of Discrimination and Protection of Minorities for almost 20 years. A 1983 recommendation of the Subcommission[48] led to the establishment of the Working Group on Traditional Practices Affecting the Health of Women and Children, composed of experts designated by the Subcommission, UNICEF, WHO, and UNESCO and of representatives of concerned non-governmental organizations. The report of the Working Group was submitted to the Commission on Human Rights at its forty-second session, in 1986.[49]

22. Pursuant to Subcommission resolutions 1989/16 and 1991/23, two regional seminars were held in Burkina Faso[50]

and Sri Lanka[51] to assess the human rights implications of certain traditional practices affecting the health of women and children. Further, in 1994, the Subcommission adopted the Plan of Action for the Elimination of Harmful Traditional Practices affecting the Health of Women and Children[52] which is based on the deliberations of the two regional seminars held in Burkina Faso and Sri Lanka, with a view to proposing the introduction of concrete and positive changes to redress the situation at the national and international levels.

Special Rapporteur on traditional practices affecting the health of women and children

23. In resolution 1988/57 the Commission on Human Rights requested the Subcommission on Prevention of Discrimination and Protection of Minorities to consider measures to be taken at the national and international levels to eliminate traditional practices and to report to it on the subject. Ms. Halima Warzazi was appointed by the Subcommission as the Special Rapporteur to study developments relating to traditional practices affecting the health of women and children. Her preliminary report,[53] which included assessments of traditional practices throughout the world, was submitted to the Subcommission at its forty-seventh session. It reflected, *inter alia*, the conclusions and recommendations of the two regional seminars in Burkina Faso and Sri Lanka. The final report[54] of the Special Rapporteur, submitted to the Subcommission at its forty-eighth session, examined the implementation of the Plan of Action for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children,[55] and the outcome of the two regional seminars in Burkina Faso and Sri Lanka.

24. The follow-up report[56] of the Special Rapporteur noted the observations and commitments by Governments in regard to the implementation of the Plan of Action. The Special Rapporteur submitted a further report[57] to the Subcommission at its fiftieth session. On the basis of that report and relevant discussions, the Subcommission adopted resolution 1998/30 in which it highlights the need for enhanced cooperation on the part of all actors to ensure dissemination of the special rapporteurs to a wider audience and appeals to the States concerned to intensify efforts to develop awareness of and mobilize international public opinion concerning the harmful effects of female genital mutilation, in particular through education, information and training. It also appeals to the international community to provide material, technical and financial support to the non-governmental organizations and groups working to achieve elimination of female genital mutilation and invites intergovernmental organizations to continue activities aimed at supporting and strengthening the efforts being made by national and local organizations. The Subcommission recommends that the mandate of the Special Rapporteur be extended and that the High Commissioner recognize the issue of traditional practices affecting the health of women and children.

E. Commission on the Status of Women

25. At its forty-second session in 1998, the Commission on the Status of Women adopted agreed conclusions relating to four of the critical areas of concern identified in the Platform for Action.[58] Specific recommendations with regard to traditional and customary practices affecting the health of women and girls were made in its agreed conclusion on violence against women,[59] where violence was defined to include harmful traditional practices against women. The agreed conclusion on human rights of women[60] recommended that Governments, non-governmental organizations and other actors of civil society take necessary action to eradicate customary or traditional practices, particularly female genital mutilation, that were harmful to, or discriminatory against, women and girls, and that were violations of human rights of women and girls. Son preference was specifically addressed in its agreed conclusion on the girl child,[61] and non-discriminatory treatment of girls and boys in the family, community and schools was advocated. Governments, civil society actors and the United Nations system were also urged to take appropriate actions, including legislation to "eradicate all customary or traditional practices, particularly female genital mutilation, that are harmful to or discriminate against women and girls and that are violations of women's human rights and obstacles to the full enjoyment by women of their human rights and fundamental freedoms" and recommended the development of programmes to help victims of such practices to overcome their trauma.

F. Regional commissions

26. In 1997, the African Centre for Women of the Economic Commission for Africa (ECA) published a paper entitled "Traditional and cultural practices harmful to the girl child: a cross-sectional review",[62] which examines causes and consequences of, *inter alia*, forced feeding and nutritional taboos, early marriage and female genital mutilation, emphasizing the need to change cultural and societal attitudes and behaviour in eradicating such

practices. Also in 1997, the Division for the Advancement of Women, ECA, UNFPA and UNICEF co-hosted an expert group meeting on adolescent girls and their rights which made several recommendations relating to traditional and cultural practices.[63] ECA has also been closely involved in the work of the Organization of African Unity (OAU) and the Inter-African Committee (IAC) on Traditional Practices Affecting the Health of Women and Children in their efforts to combat such harmful practices.

G. United Nations specialized agencies, funds and programmes

27. A number of the specialized agencies, funds and programmes of the United Nations has been involved in efforts to address traditional and customary practices affecting the health of women and girls. The landmark joint UNFPA/WHO/UNICEF statement on female genital mutilation, issued in 1997, is described above. In addition to joint initiatives, several United Nations entities have also worked independently on the issue.

UNICEF

28. UNICEF has addressed issues such as female genital mutilation, female infanticide, selective abortion, *devi* and *devadasi* in India and Nepal, early marriage, food taboos and other traditional harmful practices. Efforts have included collaboration with other United Nations entities, including WHO and UNFPA. In 1980, at a joint consultation with WHO and UNFPA, for example, UNICEF expressed concern about female genital mutilation. UNICEF has also supported the Inter-African Committee (IAC) on Traditional Practices Affecting the Health of Women and Children and collaborated with national technical institutions, donors, non-governmental organizations and other actors of civil society in community-based actions, research, advocacy, consultations and conferences. Initiatives have included sensitization campaigns to change prevailing negative attitudes towards women and the girl child, such as those related to son preference, and strategies to address female genital mutilation in the health sector and at the intersectoral level.

29. UNICEF issued an executive directive on female genital mutilation in October 1994,[64] which condemned the practice, as it "has negative impact on girls' and women's morbidity and mortality" and violates their human rights, and provided guidelines for action. In 1995, UNICEF developed a strategic framework and programming guidelines to eliminate female genital mutilation,[65] setting out measures to be introduced at the operational level through UNICEF's country programmes. UNICEF has adopted a comprehensive regional strategy to eradicate female genital mutilation in eastern and southern Africa, including Ethiopia, Eritrea, Kenya, Somalia and Uganda. This and other UNICEF-supported initiatives in the region, as well as those in Egypt, Sudan, Senegal, Burkina Faso, Mali and Gambia, have raised awareness and contributed to changing behaviour at the community level. Advocacy efforts have also resulted in commitments and laws to ban the practices.

30. UNICEF's approach has been to prioritize mobilizing resources for sustaining and strengthening the efforts of its regional and country offices. It has also supported non-governmental organization alliances. Most recently, efforts have focused on the synthesis and analysis of experience and the production of materials for education and behaviour change. Indicators are also being developed, and regional and country-level initiatives are being evaluated. UNICEF plans to review global experience in this regard, in collaboration with WHO and UNFPA, in late 1998.

UNFPA

31. In the preparations for and follow-up to the International Conference on Population and Development and the Fourth World Conference on Women, UNFPA committed itself to contribute to the elimination of all forms of harmful cultural, economic, social and political practices that affect the well-being and integrity of both women and men. UNFPA efforts towards the eradication of harmful traditional practices have focused on advocacy and public education, training and research. It has also supported initiatives to increase the public awareness of the adverse effects of harmful traditional practices.

32. UNFPA conducted a technical consultation[66] in 1996 on female genital mutilation in Addis Ababa, Ethiopia, which resulted in a framework for the integration of activities into three core programme areas: reproductive health, including family planning and sexual health; population and development strategies; and advocacy, at national, regional and international levels. UNFPA has supported community-based workshops designed to assist the community to examine the practice, recognize its harmful aspects, and replace it with socially relevant ceremonies. In 1998 for example, UNFPA's United Nations Population Award was awarded to the Northern Ugandan Sabiny Elders' Association which had participated in the REACH (Reproductive, Educative and Community Health) programme which had substituted gift-giving and public celebration for female genital mutilation. UNFPA has

encouraged Governments to remove administrative and political obstacles, facilitate access to all channels of public influence, such as mass media and formal and informal educational programmes, and engage in continuous collaboration and consultation with non-governmental organizations. Other strategies adopted by UNFPA include the appointment of Ms. Waris Dirie as Special Ambassador for the Elimination of Female Genital Mutilation in 1997.

WHO

33. Harmful traditional practices have been addressed by WHO since 1958, when the Economic and Social Council, in its resolution 680/BII (XXVI), mandated it to undertake a study of persistence of customs which subjected girls to ritual operations and of measures adopted or planned to end those practices. In 1982, WHO expressed its unequivocal opposition to the medicalization of traditional practices in any setting and stated that the involvement of health professionals in such practices could not be justified and would encourage the legitimization of such practices.[67] This approach was reiterated in the context of female genital mutilation during the Netherlands Consultancy for Maternal Health and Family Planning Congress on Female Circumcision in 1992.[68]

34. WHO has cooperated with the NGO Group established under the auspices of the Commission on Human Rights to coordinate the activities of non-governmental organizations in respect of the eradication of female genital mutilation. It also provided financial, technical and administrative support to a seminar on traditional practices affecting the health of women and children in Africa, organized by the NGO Group and the Government of Senegal (Dakar, Senegal, in February 1984). In various resolutions the WHO governing bodies have urged Member States to, *inter alia*, establish clear national policies to end traditional practices, including female genital mutilation, and requested WHO to strengthen its technical and other support to the countries involved. WHO's four main strategies have been to play an advocacy role, by emphasizing the importance of action against harmful traditional practices at the international, national and regional levels; to initiate and coordinate research and development activities at the country level and to monitor the progress of those activities; to support national authorities, networks, organizations and groups in developing relevant policies, strategies and programmes; and to support the training of health professionals in the prevention of traditional practices, including female genital mutilation, and the management of their health consequences.

35. WHO convened a technical working group meeting[69] on female genital mutilation in July 1995 which made recommendations to WHO on priority areas of work. In March 1997 it launched a Regional Plan of Action to Accelerate the Elimination of Female Genital Mutilation in Africa which sets out goals and targets for countries. WHO is currently preparing a comprehensive study, to be published by the end of 1998, entitled "Female genital mutilation: an overview".

UNESCO

36. As part of its activities to implement the Plan of Action for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children,[70] UNESCO has developed a programme to improve the biology curricula in schools, which involves the inclusion of information on the negative effects of female genital mutilation. UNESCO has also incorporated information on the specific needs of women and children in its formal and non-formal education programmes and has collected information on the impact of such educational programmes on efforts to eradicate harmful traditional practices.

UNHCR

37. In 1994, UNHCR revised its guidelines[71] on refugee children to incorporate the principles of the Convention on the Rights of the Child. The revised guidelines contain a chapter on health, which urges field staff to "give high priority to health education regarding harmful traditional practices such as FGM, and health implications on girls of early marriages and early pregnancies".[72] UNHCR has also issued a memorandum[73] for its field staff with a specific reference to dangerous traditional practices, including female genital mutilation, early childhood marriage, son preference and dowry. In addition, in its guidelines on the protection of refugee women,[74] UNHCR notes that "women may also flee their country because of severe sexual discrimination, either by official bodies or in local communities". UNHCR acknowledges, in its document entitled *Sexual Violence against Refugees: Guidelines on Prevention and Response*,[75] the statement by the Special Rapporteur on violence against women that traditional practices, including female genital mutilation, should be construed as a definite form of violence against women. UNHCR has encouraged countries to consider that persecution faced by women because of perceived transgressions of social mores should be recognized as grounds for refugee status. Furthermore, it is UNHCR's policy that female genital mutilation may be considered a form of torture.[76]

38. In its ongoing work in refugee camps, UNHCR recognizes that, while the social, cultural or religious traditions of refugee communities must be respected, attention needs to be given to certain customs that have harmful health effects, especially on women and girls, and that continue to be practised. UNHCR field staff work closely with women leaders, traditional birth attendants, religious leaders and community health workers in refugee camps to disseminate information to refugees about the physical and mental health dangers of such practices.

Trust Fund in Support of Actions to Eliminate Violence against Women

39. The Trust Fund in Support of Actions to Eliminate Violence against Women, administered by the United Nations Development Fund for Women (UNIFEM), provides assistance to non-governmental organizations that coordinate and implement projects at the national and local levels. Various project proposals relating to traditional practices, including female genital mutilation, have been submitted to the Trust Fund,[77] including a project directed at the eradication of excision in the Mopti region of Mali, to be implemented by the Association pour le progrès et la defense de droits des femmes maliennes, and on efforts to reduce the incidence of female genital mutilation through alternative coming-of-age initiation programmes, to be implemented by the Programme for Appropriate Technology in Health (PATH) in Kenya.

III. Measures taken at the national and regional levels

40. Information on measures that have been taken at the national level to address traditional practices are included in several of the national plans of action, national strategies or implementation progress reports which the Platform for Action required Governments to develop.[78] For example, Botswana's draft national plan of action[79] includes a section on the elimination of discrimination against girls in health and nutrition. Governmental, international and non-governmental organizations are to take "all the appropriate measures with a view to abolishing traditional practices prejudicial to the health of children."[80] In its plan of action, the Russian Federation states that the deterioration in food product consumption patterns gives cause for concern, in that it has negative consequences for the health of girls, pregnant woman and nursing mothers.[81] Further, Russia recognizes the need to conduct an information and education campaign designed to change traditional stereotypes based on the supremacy of one sex over the other, in order to eliminate violence against women.

41. Various other initiatives and efforts have been adopted by Governments which are not explicitly described in national plans of action. For example, the Government of India adopted the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act in September 1994 which aims to eradicate sex-selective abortion by prohibiting revelation of the sex of the foetus.[82] The Government of Denmark[83] has concluded that its Regulations Governing Asylum accommodate the grant of refugee status to women who have been subjected to gender-based persecution. It has also decided to establish a working group to launch an extensive educational campaign against female genital mutilation.

42. The Government of Gambia has proclaimed[84] that the reproductive health issue, including female genital mutilation, may be publicly discussed on national radio and television networks and that non-governmental organizations may utilize the official media to campaign about female genital mutilation. The Uganda State Minister for Gender and Community Development has announced[85] that the Government is formulating a law banning female genital mutilation throughout the country. The Council of Ministers in Togo[86] adopted a law in December 1997 banning the practice of excision. Enactment of this law requires the sanction of the National Assembly. The United Republic of Tanzania[87] has introduced a law against female genital mutilation which stipulates that any person who commits the offence of female genital mutilation is liable to imprisonment for a term of not less than 5 years and not exceeding 15 years and/or to a fine. Following a sensitization seminar, the Members of Parliament in Côte d'Ivoire[88] recognized the need to enact future legislation against the practice of female genital mutilation, and a law is expected to be proposed by the Minister of Family and the Promotion of Women to the Parliament to ban the practice.

43. China[89] committed itself to examining the situation of, and take appropriate measures against, such criminal acts as infanticide. China also forbids prenatal sex selection for non-medical purposes. Israel[90] recognizes that its country's traditional attitude of not taking equal interest in women's health and men's health may have resulted in the poorer health of women in Israel. It also recognizes that traditional religious structures have significant influence on the development of social norms and attitudes with regard to gender equality and family relations.

44. The United Kingdom[91] enacted legislation in 1985 prohibiting female circumcision. The 1989 Children Act

does not allow parents to have their daughters undergo excision outside the country unless they have the consent of the courts. *Guidelines on Gender Issues for Decision Makers*, issued by the Australian Government in 1996,[92] recognized that female genital mutilation may constitute persecution in particular circumstances.

45. Canada's Criminal Code prohibits female genital mutilation and also precludes removal of a child from Canada for the purposes of female genital mutilation. In 1993 Canada[93] granted refugee status to a Somali woman who had fled her country because she feared that her daughter would be forced to undergo genital mutilation. The Congress of the United States of America passed several legislative measures related to female genital mutilation in 1996.[94] The practice is a federal criminal offence in the United States, unless the procedure is necessary to protect a young person's health. In 1996 a woman who escaped from the practice was granted asylum by the United States.[95] Sweden gave two families residence permits on humanitarian grounds in 1997 because the female members of these families would be in danger of genital mutilation if returned to their country of origin.[96]

46. In its national plan of action for the advancement of women, Ethiopia has identified the eradication of harmful traditional practices as an area for action.[97] A study on female genital mutilation was published in Chad in August 1991 as a joint effort of the Ministry of Planning and Cooperation and UNICEF. On 28 December 1997, the highest Egyptian administrative court overturned a lower court ruling which had struck down a governmental directive banning the practice by health workers of female genital mutilation.[98]

47. Several efforts have also been undertaken by regional bodies. The South Asian Association for Regional Cooperation (SAARC) has addressed the elimination of discriminatory practices against the girl child. Commitments with regard to the eradication of harmful traditional practices were made in the Africa Declaration for Children, concluded at the Organization of African Unity (OAU) International Conference on Assistance to African Children (Dakar, Senegal, 1992). Jointly with the Inter-African Committee (IAC) on Traditional Practices Affecting the Health of Women and Children, the Economic Commission for Africa (ECA), and a Norway-based non-governmental organization, the Norwegian Women's Front, OAU also took a part in organizing a Symposium for Legislators on the Drafting of the African Declaration on Violence Against Women Related to Traditional Practices[99] (Addis Ababa, Ethiopia, September 1997). At the Symposium, the participants from 15 African countries and the United Nations system examined the human rights perspective of harmful traditional practices, discussed the possible legislative measures to be undertaken using international conventions and treaties already signed by African Governments, and agreed on the Addis Ababa Declaration on Violence against Women. Adopted by the OAU Commission of Labour and Social Affairs in Pretoria, South Africa, in April 1998, the Declaration was then endorsed by the OAU Council of Ministers and Assembly of Heads of State and Government in Burkina Faso in June 1998.

48. Non-governmental organizations, women's groups and grass-roots organizations have also been active in the context of traditional and customary practices affecting the health of women and children. For example, the Inter-African Committee (IAC) on Traditional Practices Affecting the Health of Women and Children has been actively involved in the eradication of harmful traditional practices, including female genital mutilation, early marriage and nutritional taboos. With its national committees in 26 countries in Africa and in close partnership with the Economic Commission for Africa (ECA) and United Nations specialized agencies, IAC has implemented programmes, including training and information campaigns, at the grass-roots level, and provided training for traditional birth attendants and for trainers, and held sensitization campaigns to raise public awareness of the harmful consequences of certain traditional practices. IAC held its fourth regional conference[100] in Dakar, Senegal, in November 1997, and a Symposium for Religious Leaders and Medical Personnel was held in July 1998 in Gambia.

49. Other non-governmental initiatives have included those of the National Association of Nigerian Nurses and Midwives (NANNM),[101] a professional association with 60,000 members which has, *inter alia*, conducted a broad-based campaign to address female genital mutilation in 11 states of Nigeria. In Uganda[102] in 1992, the Sabiny people established an Elders Association which, through education with regard to the harmful effects of female genital mutilation, has reduced the incidence of the practice in northern Uganda.[103]

50. As a result of a worldwide campaign initiated by International Needs Ghana, concerning *trokosi* tradition, according to which girls are given to a god and its proxy, a priest, as a way of appeasing the gods for crimes committed by family members, a criminal code amendment bill was introduced in January 1998 to criminalize the practice.[104] Non-governmental organizations have also worked for the release of individual *trokosi* women and girls, with the result that as many as 10 shrines have given up the *trokosi* practice entirely, freeing 436 women and girls, who were then helped

to enter school or learn vocational skills. In addition, shrines have been provided with alternative methods of income generation to support themselves without the services of *trokosi* women and girls.

IV. Conclusions

51. Traditional and customary practices affecting the health of women and girls – in particular, female genital mutilation – have long been a target of intergovernmental, governmental and civil society concern, and a variety of measures has been introduced to address them and their harmful effects. However, the elimination of such practices requires greater efforts. Fundamental changes in societal attitudes are necessary. This requires national, regional and international efforts devised within the context of health, human rights and women's empowerment.

52. The establishment and/or the strengthening of a concrete mechanism within a Government for the implementation of national policies, including effective legal measures for the elimination of all forms of harmful traditional practices, are crucial to the creation of a conducive environment for the enforcement of legal measures and the organization of broad-based coordinated public education and awareness-raising programmes. This is also necessary so that progress can be monitored and research conducted so that appropriate, culturally sensitive, and effective strategies can be designed.

53. Relevant international and regional human rights treaties, including the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, should be ratified by Governments and the obligations established in those instruments fully implemented. National legal protections should be put in place and laws modified, so that harmful traditional or customary practices are discouraged effectively. In particular, Governments should review their national laws to ensure that women and girls are not adversely affected in this context by the coexistence and interaction of customary, religious and general laws. Laws in this context should be made widely known, both through educational curricula and as part of public awareness-raising campaigns. Governments should also introduce effective strategies for the implementation of the outcomes of the United Nations global conferences, in particular, the Fourth World Conference on Women. The Plan of Action for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Girls should also be fully implemented and support and information provided to the Special Rapporteur.

54. Education and public awareness-raising campaigns have been effective tools in the elimination of harmful traditional or customary practices. Primary and secondary education curricula should include discussion of the empowerment of women and their human rights and specifically address any harmful traditional or customary practices. The curricula of relevant professional groups, including those of nurses, midwives, and doctors, should include modules devoted to the issues raised in the context of harmful traditional or customary practices. Specific groups, including religious and community leaders and traditional healers, should be the target of sensitization campaigns and education and training. The media, including radio, television, print, theatre and traditional forms, should be encouraged to participate actively in public education campaigns.

55. Through consultations with communities and religious and cultural groups and their leaders, Governments should explore alternatives to harmful traditional or customary practices, particularly where those practices form part of a ritual ceremony or rite of passage. In addition, those who perform the practices should be provided with viable alternative means for income generation.

56. The important role of non-governmental organizations in addressing harmful traditional or customary practices should also be recognized and supported. Governments should encourage the collaboration and coordination of the efforts of non-governmental organizations and take steps to ensure that non-governmental organizations are appropriately funded. Governments should also cooperate and collaborate with such organizations in their programmes in the context of this issue.

57. The United Nations and regional bodies should also continue to support initiatives to eliminate traditional or customary practices affecting the health of women and girls, through collaboration with both Governments and non-governmental organizations.

58. Collaboration and coordination among human rights organizations and women's groups should be strengthened, with assistance from donor Governments and bodies of the United Nations system. Networking among Governments, national non-governmental organizations, foreign donors and bodies of the United Nations system should also be further developed, with a view to sharing information about best practices.

59. Donor countries and other bodies of the United Nations system which are not directly involved in the issue of harmful traditional practices can also help by providing developmental assistance to improve the social and economic status of disadvantaged communities, especially women and girl children, and by encouraging human rights education at all levels.

Notes

[1] A/CONF.157/24 (Part I), chap. III.

[2] *Report of the Fourth World Conference on Women, Beijing, 4–15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annex I.

[3] Ibid., annex II.

[4] *Report of the International Conference on Population and Development, Cairo, 5–13 September 1994* (United Nations publication, Sales No. E.95.XIII.18), chap. I, resolution 1, annex.

[5] E/CN.4/Sub.2/1994/10/Add.1 and Corr.1.

[6] Resolution 34/180, annex.

[7] Resolution 44/25, annex.

[8] A/CONF.157/24 (Part I), chap. III.

[9] Resolution 445 C (XIV).

[10] See *Report of a Seminar on Traditional Practices Affecting the Health of Women and Children: Female Circumcision, Childhood Marriage, Nutritional Taboos, etc., Khartoum, Sudan, 10–15 February 1979*.

[11] A/CONF.157/24 (Part I), chap. III.

[12] Ibid., chap. I, para. 18.

[13] Ibid., chap. II, para. 48.

[14] *Report of the Fourth World Conference on Women ...*, chap. I, resolution 1, annex I.

[15] Ibid., annex II.

[16] See General Assembly resolution 48/104 of 28 December 1993.

[17] See *Report of the Fourth World Conference on Women ...*, chap. I, resolution 1, annex II, para. 113.

[18] Ibid., para. 124.

[19] Ibid., para. 259.

[20] Ibid., para. 276.

[21] *Report of the International Conference on Population and Development ...*, chap. I, resolution 1, annex.

[22] Ibid., chap. IV, B.

[23] Resolution 34/180, annex.

[24] See *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 38* (A/49/38).

[25] See *Official Records of the General Assembly, Fiftieth Session, Supplement No. 38* (A/50/38).

[26] See *Official Records of the General Assembly, Fifty-first Session, Supplement No. 38* (A/51/38).

[27] See *Official Records of the General Assembly, Fifty-third Session, Supplement No. 38* (A/53/38).

[28] See "Report of the Committee on the Elimination of Discrimination against Women at its nineteenth session" (advanced unedited version).

[29] Ibid.

[30] Ibid.

[31] See *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 38* (A/45/38).

[32] See *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 38* (A/47/38).

[33] See *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 38* (A/49/38).

[34] Resolution 44/25, annex.

[35] Ibid., article 24.3.

[36] See "Concluding observations of the Committee on the Rights of the Child: Ethiopia" (CRC/C/15/Add.67).

[37] See "Concluding observations of the Committee on the Rights of the Child: Bangladesh" (CRC/C/15/Add.74); "Concluding observations of the Committee on the Rights of the Child: Ghana" (CRC/C/15/Add.73); "Concluding observations of the Committee on the Rights of the Child: Togo" (CRC/C/15/Add.83); "Concluding observations of the Committee on the Rights of the Child: Uganda" (CRC/C/15/Add.80).

[38] Resolution 2200 A (XXI).

[39] See "Concluding observations of the Human Rights Committee: India" (CCPR/C/79/Add.81).

[40] See "Concluding observations of the Human Rights Committee: Senegal" (CCPR/C/79/Add.82).

[41] See "Concluding observations of the Human Rights Committee: Sudan" (CCPR/C/79/Add.85).

[42] See "Concluding observations of the Human Rights Committee: Zimbabwe" (CCPR/C/79/Add.89).

[43] E/CN.4/1995/42.

[44] Ibid., para. 67.

[45] Ibid., para. 144.

[46] E/CN.4/1996/53.

[47] Ibid., paras. 101 and 102.

[48] Resolution 1983/1, of 31 August 1983.

[49] E/CN.4/1986/42.

[50] E/CN.4/Sub.2/1991/48.

[51] E/CN.4/Sub.2/1994/10.

[52] E/CN.4/Sub.2/1994/10/Add.1 and Corr.1.

[53] E/CN.4/Sub.2/1995/6.

[54] E/CN.4/Sub.2/1996/6.

[55] E/CN.4/Sub.2/1994/10/Add.1 and Corr.1.

[56] E/CN.4/Sub.2/1997/10.

[57] E/CN.4/Sub.2/1998/11.

[58] See *Official Records of the Economic and Social Council, 1998, Supplement No. 7* (E/1998/27, E/CN.6/1998/12).

[59] Ibid., chap. I, B-IV.

[60] Ibid.

[61] Ibid.

[62] Occasional Paper No. 1 (1997). Addis Ababa, African Centre for Women.

[63] EGM/AGR/1997/Rep.1, para. 97.

[64] See "Guidelines for UNICEF action on eliminating female genital mutilation" (CS/EXD/1994-009).

[65] *Strategic Framework and Programming Guidelines to Eliminate Female Genital Mutilation* (New York, UNICEF, 1995).

[66] See "Report of the Technical Consultation on Female Genital Mutilation, 27–29 March 1996, Addis Ababa, Ethiopia" (E/500/1996/R/500/1997).

[67] See "Female genital mutilation" (WHO/FHE/94.4).

[68] Ibid.

[69] See "Female genital mutilation: report of a WHO technical working group, Geneva, 17–19 July 1995" (WHO/FRH/WHD/96.10).

[70] E/CN.4/Sub.2/1994/10/Add.1 and Corr.1.

[71] See *Refugee Children: Guidelines on Protection and Care* (Geneva, UNHCR, 1994).

[72] Ibid., p. 65.

[73] UNHCR/IOM/83/97 (UNHCR/FOM/90/97).

[74] *Guidelines on the Protection of Refugee Women* (Geneva, UNHCR, 1991), para. 55.

[75] See *Sexual Violence against Refugees: Guidelines on Prevention and Response* (Geneva, UNHCR, 1995).

[76] See the UNHCR homepage on issues regarding women: www.unhcr.ch/issues/women/women.htm

[77] See "Trust Fund in Support of Actions to Eliminate Violence against Women", a document prepared for the Programme Approval Committee of UNIFEM, at its second session, November 1997.

[78] *Report of the Fourth World Conference on Women, Beijing ...*, chap. I, resolution 1, annex I, para. 297.

[79] "Draft national plan of action", Botswana, Ministry of Labour and Home Affairs, Department of Culture and Social Welfare, Women's Affairs Division, 1996.

[80] Ibid.

[81] See "Concept for the improvement of the status of women in the Russian Federation" (translation), Russian Federation, 1996.

[82] E/CN.4/1996/53.

[83] "Statement to the Folketing on follow-up at national and international levels to the United Nations Fourth World Conference on Women", para. 20, Denmark, Ministry of Foreign Affairs.

[84] See *Inter-African Committee Newsletter No. 23* (June 1998).

[85] Ibid.

[86] Ibid.

[87] Ibid.

[88] Ibid.

[89] See *Programme for the Development of Chinese Women (1995–2000)*, China.

[90] See *Continued Progress: National Report on the Status of Women in Israel*, Israel, Office of the Prime Minister, Prime Minister's Adviser on the Status of Women, March 1997.

[91] E/CN.4/Sub.2/1998/11, paras. 42-54.

[92] See Amnesty International Index: ACT/77/13/97, United Kingdom.

[93] Ibid.

[94] See *Reproductive Freedom in Focus*, New York, Center for Reproductive Law and Policy.

[95] Amnesty International Index: ACT/77/13/97, United Kingdom.

[96] Ibid.

[97] See *National Policy on Ethiopian Women* (Addis Ababa, Office of the Prime Minister, Transitional Government of Ethiopia), September 1993.

[98] See *Women's Action 8.4* (Update – February 1998), New York, Equality Now.

[99] *WIN News*, vol. 24, No. 3 (Summer 1998), Women's International Network.

[100] *WIN News*, vol. 24, No. 1 (Winter 1998), Women's International Network.

[101] See "Eradicating female genital mutilation: lessons for donors", Occasional Paper No. 1, Washington, D.C., Wallace Global Fund, 1997.

[102] *The New York Times*, 16 June 1998.

[103] See para. 38 above.

[104] *Women's Action 14.1* (March 1998), New York, Equality Now.

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Human rights questions: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in Haiti

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report, accompanied by recommendations, on the situation of human rights in Haiti, prepared by Mr. Adama Dieng, independent expert, in accordance with Commission on Human Rights resolution 1998/58 dated 17 April 1998.

* A/53/150.

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Annex

Report on the situation of human rights in Haiti prepared by Mr. Adama Dieng, independent expert

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I. Introduction

1. In his report on developments in the human rights situation in Haiti to the General Assembly at its fifty-second session, the independent expert had expressed concern at the deteriorating political, social and economic situation and at the possible consequences of the departure of the United Nations Transition Mission in Haiti (UNTMIH), given the fragile state of Haiti's young democracy. His view, which remains essentially unchanged, is that the Haitian National Police has not yet attained the level of professionalism that would enable it to maintain law and order on its own. He had therefore recommended that the United Nations should seek some way of continuing to provide assistance in the event that it was required to withdraw definitively. In that connection, he welcomed the initiative taken by the Secretary-General to recommend to the Security Council the establishment of a United Nations Civilian Police Mission in Haiti (MIPONUH) with a mandate to assist the national authorities by supporting and contributing to the professionalization of the Haitian National Police. The Security Council accepted this recommendation and adopted the relevant decision in its resolution 1141 (1997) dated 28 November 1997.

2. In recognition of the relationship between peace and development, the Secretary-General decided to maintain a direct link between MIPONUH and the mechanism for the coordination of United Nations development agencies by making the United Nations Development Programme (UNDP) Resident Representative the deputy of his Representative in Haiti, who is head of the mission. The inclusion of a development cooperation component among the objectives of the peacekeeping mission in Haiti is certainly an original approach. Quite apart from its originality, the approach is a constructive one in that it takes into account the need to improve the living conditions of the population through the implementation of small carefully designed local projects with popular participation.

3. Since then, the independent expert has paid two visits to Haiti (the first from 26 February to 2 March 1998 and the second from 9 to 15 August 1998). During the course of his various missions, the expert met regularly with the main actors, including President René Préval, Gérard Pierre Charles, leader of the Organisation Politique Lavalas (OPL) and former President Jean-Bertrand Aristide, leader of Fanmi Lavalas. He had meetings with the Minister of Justice, the President of the Senate and of the National Assembly, the Minister for Foreign Affairs, the Director-General of the Haitian National Police, the Director of the National Institute of Agrarian Reform (INARA), the Inspector General of the National Police, the coordinator of the reform of justice project, and with human rights non-governmental organizations, including the Plate-forme des organisations haïtiennes des droits de l'homme and Kay Famm.

4. The independent expert also held fruitful discussions with the Special Representative of the Secretary-General for Haiti, the Executive Director of the International Civilian Mission in Haiti (MICIVIH), the Deputy Executive Director, the UNDP Resident Representative and Deputy Resident Representative, representatives of international agencies, and the chief technical adviser on the project to professionalize the National Police. He visited Gonaïves, Aquin and Cap Haïtien. He had the opportunity in these various localities to hold discussions not only with judges and Government commissioners but also with individuals in custody in police stations, convicted prisoners and persons held in preventive detention in the respective prisons.

5. The present report summarizes the findings of the two missions and the recommendations made by the independent expert. It should be noted that the report submitted to the Commission on Human Rights at its fifty-fourth session had not been published. The expert therefore considered that it might be useful to reproduce here most of the comments that remain relevant.

II. Social and political context

6. Since 8 June 1997, President Préval has been faced with an impasse in the Parliament, which on two occasions has refused to approve the nomination of the prime minister-designate. The first nominee was Mr. Ericq Pierre and the second Mr. Hervé Denis. The absence of a prime minister for fourteen months has had an adverse impact on the human rights situation. It should be noted that as of 20 October 1997, the Prime Minister, Rosny Smarth, and several ministers have ceased on an interim basis to exercise their functions. This has resulted in a situation in which those ministers who remained in their posts are now responsible for more than one ministry, with all that that implies for good governance, notwithstanding their tireless efforts. Quite apart from the disastrous effects which the institutional crisis has had on economic activity, it is clear that the present situation is hardly reassuring to private investors. The purchasing power of Haitians is being eroded daily, inflation is raging, prices of basic foodstuffs are steadily rising and both the process of modernization of the State and the pace of economic reforms are slowing. It is therefore of the utmost importance to overcome the crisis without delay. Overcoming the crisis is both an imperative and a

requirement for pursuing the process of democratization and strengthening the protection of human rights. Upon his departure from Haiti, the expert was of the opinion that a consensus was within reach that would pave the way for the confirmation of a third prime minister-designate, namely, professor Jacques Edouard Alexis, who is currently Minister of Education.

7. It is regrettable that the government crisis which led to the collapse of the State apparatus made it impossible to take vigorous action aimed at the gradual implementation of economic, social and cultural rights, including the right to health and the right to education. Likewise, the transformation of society is still being hampered by the weakness of its institutions, and it suffices in this regard to look at the deplorable situation of women's rights, the violations of the rights of children, the impunity enjoyed by those who commit serious human rights violations, the lack of professionalism of the National Police and the deterioration of conditions in prisons. It should be noted, however, that some progress has been made in the process of reform of the judiciary.

III. Combating impunity

8. The weakness of the judicial system remains a cause of serious concern, especially since the population continues to call with increasing insistence for the trial of the alleged authors of the massacres at Raboteau (perpetrated in 1994) and at Jean-Rabel (perpetrated in 1987). In other words, it is the question of the impunity of the authors of serious violations of human rights as well as the right to reparation, restitution and rehabilitation of victims which are currently at the centre of a wide-ranging public debate in Haiti.

9. It should be pointed out that most human rights organizations in Haiti have expressed concern over the attitude of officials of the Ministry of Justice, whom they accuse of a lack of transparency in the handling of the issue of reparations. The first complaint is that the Ministry, instead of implementing the recommendations of the National Commission of Truth and Justice, has established an Office of Prosecution and Follow-up for Victims (BPSV). The organizations regret that non-governmental organizations (NGOs) have not been involved in the management of that Office, which apparently does not have procedures for the settlement of cases. For his part, the Minister has reaffirmed his determination to do everything possible to work with all human rights protection organizations which have consistently supported the efforts of the Haitian people. He pointed out that the establishment of BPSV is a timely response to the claims of the relatives of victims and of victims themselves, who are frustrated at the State's delay in adopting measures to provide for reparations. Insofar as the Ministry of Justice favours modalities for collective reparations in the form of legal and medical assistance and economic and social reinsertion, the independent expert recommends much broader cooperation, or even a partnership with NGOs in the search for solutions to the problem of reparations. Such an approach is all the more constructive as, during the period of the *coup d'état*, numerous networks had been put in place by different sectors of civil society to provide assistance to victims. In this connection, the independent expert urges the international community to pay greater attention to and show greater interest in the question of reparations and to support the efforts being made to provide moral and material reparations. Thus far, the international community has been unwilling to even listen to any talk about victims. It should take account of the fact that Haiti is today facing a problem of political stability and of the reconstruction of a social fabric which has been literally torn apart. It must therefore avoid the temptation to view the situation in purely economic terms and remember that the Haitian people have lived through the tragedy of 40 years of dictatorship, that they have never benefited from any form of reparation whatsoever, not even a symbolic reparation in history and civic education text books. It is gratifying to note that the Haitian Government is convinced that "the damage suffered calls for reparations at the therapeutic, legal, economic and symbolic levels, but that reparations have true meaning only if they help to re-energize institutions and society". Note should also be taken of the support which MICIVIH provides to organizations that assist victims of the *coup d'état*. It has been entrusted by BPSV with the task of disseminating the report of the National Commission of Truth and Justice (CNVJ), a recommendation that had been made long ago by the independent expert.

10. The affair of the documents seized from the headquarters of the Haitian Armed Forces and of the Front pour l'avancement et le progrès Haïtien (FRAPH) by the Americans, to which the independent expert already alluded in his report contained in document E/CN.4/1997/89 and in his oral presentations to the Commission on Human Rights in April 1997 and in April 1998 continues to cause controversy. The Executive Director of MICIVIH, Mr. Colin Granderson, alluded to this during one of his recent visits to Gonaïves. In response to a question by human rights defenders, he declared publicly that it was important to return these documents in order to help shed light on cases currently before the courts.

11. Among these cases is one that deals with the Raboteau mas ..e, another matter of obvious interest, as much to the authorities as to the population. The trial of the perpetrators of that massacre, which some parties unhesitatingly refer to as the trial of the *coup d'etat* of September 1991, is symbolic for more than one reason. The success of the struggle against impunity largely depends on the way in which this trial is conducted. It is consequently important for the United States of America to return the confiscated documents, intact and without delay, since they may well prove to be an invaluable source of information for the proper administration of justice.

12. No effort should be spared in identifying, pursuing, and trying the perpetrators of these abominable crimes, who, if they are found guilty, should be punished in accordance with the law and with respect for the principles of human rights. In essence, this is a matter of successfully conducting a trial during which the guarantees set forth in article 14 of the International Covenant on Civil and Political Rights will be scrupulously observed. It should not be necessary to invoke the responsibility of States to conduct exhaustive inquiries into violations of human rights in order to convince the United States of America to return the confiscated documents intact, thus allowing Haiti to fulfil its obligation to procure justice for the victims of the *coup d'état* of September 1991.

13. The independent expert invites the United States of America, a country with a time-honoured legal tradition, to fulfil a fundamental duty by contributing to the pursuit of truth. He furthermore urges all concerned States to assist in the extradition of the officers accused of participation in the Raboteau massacre – thereby respecting the primacy of law. During his visit in August 1998, the independent expert learned that the requests for extradition of the superior officers had been turned down on legal grounds. He therefore recommends that assistance should be furnished to the Haitian Government with a view to maximizing its chances of obtaining a favourable response to its extradition requests.

IV. The Haitian National Police

14. Although the National Police has made considerable progress during the past two years, the many human rights violations committed by its agents remain cause for concern.

15. The Mirebalais affair, named for a town located on the central plateau, exemplifies the atmosphere of violence prevalent in that region, which smacks of political violence. It also illustrates the shortcomings of the Haitian National Police. On 5 February 1998, two persons, one of them a police commissioner, were killed during incidents in which members of a popular organization known as "Mete lòd nan dezòd", which has close links to the Lanfanmi Lavalas party, clashed with members of the Mouvement des Paysans de Papaye. The independent expert has paid close attention to this incident, because it conceals the seeds of a conflict that should be averted before it spreads throughout the central plateau and beyond. Steps have of course been taken by the Minister of Justice, who suspended the senior judge and the government commissioner who were suspected of involvement in the murderous incidents that transpired in Mirebalais. But consideration must urgently be given to the conduct of the National Police, and, more pointedly, to the Compagnie d'Intervention Rapide et de Maintien d'Ordre (Rapid Intervention and Law Enforcement Unit). This new organ, under the authority of the Director-General of the Haitian National Police, allegedly conducts itself in a corporatist manner reminiscent of the troops of the former Haitian armed forces. Haiti has had no army since President Aristide took the decision to disband it. That step was hailed by the Haitian people, who then witnessed the disappearance of an institution they had traditionally regarded as an occupying army. In any case, these events must be taken very seriously, and should trigger reflection about the restoration of peace and the maintenance of order.

16. In his report E/CN.4/1997/89, the independent expert commended the establishment of the Office of the Inspector-General of the Haitian National Police (IGPNH). The Chief Inspector-General of the Haitian National Police, Me Eucher Luc Joseph has since submitted an evaluation of operations spanning the period from November 1995 to December 1997. That evaluation report highlights the considerable efforts that have been made to clean up the police force, despite the many difficulties encountered. The functions of the Inspector-General's Office are as follows:

(a) To conduct administrative investigations;

(b) To inspect and monitor units of the National Police;

(c) To counsel government authorities, and in particular the Minister of Justice and the Director-General, concerning what measures should be taken to ensure the evolution of the new National Police within a context of respect for matters of principle. During the period under review, 2,278 files were turned over to the Inspector-General's Office, and have been broken down as follows:

- 468 cases of human rights violations, 234 of which have been reviewed;

- 188 cases of fraud or theft, of which 86 have been reviewed;
- 32 cases involving drugs, of which 15 have been reviewed;
- 1,392 cases of violations of rules, of which 1,051 have been reviewed;
- 187 miscellaneous complaints.

Many cases of corruption have occurred, none of which have been addressed.

17. The most serious offences account for 33 per cent of the files received; following their review, the contracts of 200 police officers were revoked, and the files of 66 police officers dismissed for disciplinary and criminal offenses were turned over to the courts. Those cases have been broken down as follows: crimes (assassinations, murder and attempted murder, voluntary homicide), 14; thefts, 17; gratuitous violence and physical abuse, 6; embezzlement or extortion, use of counterfeit money, 5; illegal searches, 3; misuse of firearms, infliction of gunshot wounds, 3; other (insulting behaviour, bribing witnesses, use of narcotics), 13.

18. These figures demonstrate the determination of the Inspector-General's Office to clean up the new National Police before it develops habits which could prove harmful to human rights. The successes of that office are worth emphasizing, in view of the many difficulties and obstacles encountered by investigators. These include shortage of human resources; the pressure brought to bear on investigators, including death threats against them and their families; the lack of support from one sector of the hierarchy, which has left it to the investigators alone to determine responsibility in particularly serious cases; and problems of a logistical nature, especially the shortage of vehicles and computers and the absence of a communications system. But the greatest obstacle is the defects in the Haitian justice system, which cause frustration in the Inspector-General's Office. The 66 files turned over to the courts since November 1995 concerning police officers implicated in serious offences who have not yet been tried or convicted, serve as an illustration. Even worse, police officers brought before the courts for human rights violations have been released by lenient judges. The Inspector-General, deeply concerned by this situation, expressed concern as to how the members of his Office will be able to handle sensitive files with firmness and determination over a period of months while facing the likelihood of near-certain impunity for the police officers who have committed or abetted these reprehensible acts. He then added the following statement, which the independent expert endorses: "Judicial impunity and complicity constitute an obstacle to the process of cleaning up the Haitian National Police as well as to the maintenance of order." In other words, real synergy between the justice system and the police is essential if the protection of persons and property is to be effectively enhanced.

19. The problems of the National Police are exacerbated by the economic and political climate, and by the weakness of the State. It must nonetheless be acknowledged that this young institution has made considerable progress. That in no way, however, diminishes all that remains to be done to strengthen the National Police and to cultivate a rapport between this arm of the justice system and the population it serves. The Haitian people are the real and natural judges of this situation. At the moment, they are keeping close and meticulous watch on their police force, and have a subtle appreciation of the difficulties in establishing it. It appears that the population has very high expectations of its police. It hopes to see the emergence of a police force which will serve the community and foster its development. This concept naturally comprises the technical role of the police force, and the recognized need to maintain order and to crack down on crimes and offences. As the Director-General of the National Police has noted, the task is not an easy one, and hence there is a need to define in plain terms the role of a police officer for both the present and the future. How can the police force be trained so as to meet the expectations of the people? It should be recognized that most police officers do their jobs in a relatively acceptable manner, in accordance with the methods available to them. The independent expert is nonetheless disturbed by the excesses of some police officers who have been implicated in cases of torture, abuse, corruption, and narcotics trafficking. More than 150 cases of inhuman and degrading treatment were recorded between January and May 1998. In many cases, MICIVIH observers have noted marks on the bodies of detainees abused during custody, which strengthens the credibility of the allegations. As for summary executions, at least four cases have been reported in Port-au-Prince, of gang leaders said to have resisted arrest. According to the Director-General of the National Police, the rampant crime and lawlessness in Cité Soleil, a suburb of Port-au-Prince, was formerly a serious problem for the police. He acknowledges that the problem has now been eradicated and that Cité Soleil is no longer a hub of crime and lawlessness. He also asserts that that result was achieved by way of operations conducted by specialized police units, and that those units did not carry out summary executions when they arrested gangsters. The expert nonetheless requested an investigation into those incidents:

among others, the case of a gang leader who was confirmed, by credible witnesses, to be alive at the time of his arrest.

20. In any case, it must be acknowledged that the conduct of the Haitian National Police is generally positive. Regrettably, however, police officers identified as responsible for human rights violations, corruption and other crimes have been promptly released by judges, although the files prepared by the Inspector-General's Office contained ample proof. Such releases are apparently carried out by corrupt judges who receive sums of money from police officers brought before them. That kind of complicity between venal judges and police officers naturally causes frustration in the ranks of the National Police. This situation is even more reprehensible in view of the fact that, to date, approximately ten police officers have been killed in 1998.

21. The expert regrets that the Haitian legislature has failed to review the observations formulated by him in his report for 1997 (A/52/499) with respect to the draft law on judicial reform, and in particular those parts which concern the non-applicability of statutory limitations to crimes and offences, and the relationship between the principle of equality and the rule concerning the period of limitation. The interim provision regarding the permanent departure of the United Nations contingent – which the expert had criticized – has been amended as follows: "Article 10: As from the date of publication of this law, the State assumes the obligation to procure the departure of all foreign armed forces, and will take all necessary measures to ensure that no armed force other than the Haitian National Police exists in the national territory." Although the reference to the United Nations contingent has been deleted, the article contains an ambiguity which the expert mentioned to President Préval, the Chairman of the Chamber of Deputies and the foremost political leaders. The opinion he has formed in the light of those talks is that the provision in question has no effect whatever on the presence of the United Nations Transition Mission in Haiti (UNTMIH), which must remain until the National Police has acquired the necessary expertise to permit it to perform its duties fully and effectively. That is to say that withdrawing UNTMIH would constitute not only a major obstacle to enhancing the professionalism of the National Police, but also a threat to the security of the Haitian State. It should not be overlooked that the absence of a Government for what will soon be fifteen months has had an impact on the conduct of some police officers. A marked trend toward corruption and involvement in drug-related incidents has in fact been observed. Seven police officers misappropriated 450 kilograms of cocaine that had been seized on 8 May 1998. Two have been arrested, but the other five remain at large. It is even feared that police elements may be linked to political groups, and in particular to anti-democratic sectors. Nostalgic for the dictatorship and profiting from the crisis, they are vigorously active in the field. As for the Haitian people, they consider that status quo to be a sign of irresponsibility on the part of their representatives. In such an atmosphere, it should not be surprising that the police force has attracted the interest of many political sectors. It is clear that each sector would like to take control of the armed branch of the State; that being impossible, the police force has become the target, and police officers are the victims of aggression.

V. The judicial system

22. As the expert had already observed, the greatest challenge faced by Haiti is to build a State ruled by law through the establishment of a modern, effective, independent, democratic, equitable judicial system available to all. He therefore contributed his views and recommendations to the study carried out by the national Preparatory Commission for the Reform of Justice. In this regard, he wishes to draw attention to the efforts made by the European Commission, which enabled the Preparatory Commission to benefit from the contributions of foreign experts whose presence in Haiti was greatly appreciated by Ms. Florence Elie, Chairperson of the Commission. This eminent Haitian jurist and human rights activist knew what was at stake when she stated: "Reform could not succeed unless two conditions are met: it must be purely Haitian, despite the need for external support, and it must meet the needs of all social groups". The independent expert shares her view that "despite social progress during the past decade, the judiciary remains part of an exclusionary State system characterized by a judicial system which is inaccessible, ineffective and slow and which fails to respect human rights. As a result, the majority of the population is essentially without legal services. Guaranteeing respect for and protection of fundamental rights is, therefore, one of the major goals of the reform". The Preparatory Commission, which was established in February 1997 pursuant to a recommendation of the National Commission of Truth and Justice, has submitted its report to the Ministry of Justice. The report may be described as a general policy document on the reform of justice which contains proposals for reform of, *inter alia*, the legal system and a strategy for action accompanied by a timetable. It focuses on five topics: (a) the fundamentals of reform; (b) civil society's primary requirements for the administration of justice; (c) responses to requests from civil society; (d) a strategy for action; and

(e) the agents of the change. On 6 July 1998, members of the Commission, donors and other partners held a fruitful discussion of the various focuses of the report and proposals for practical action. It should be noted that the general policy document assigns a key role to civil society. The independent expert hopes that he is not mistaken in citing this as proof that in Haiti, nothing will ever again be the same and that members of civil society will henceforth have a voice in all matters related to the administration of justice. It is true that the reform of the justice system is the subject of publicly-made commitments made by political figures and organizations of civil society and is based on the 1987 Constitution. But talk is not enough; it is time for action. The matter is urgent, and delay would pose a risk in view of the number of detainees in Haitian prisons. At present, out of a prison population of approximately 3,500 detainees, 85 per cent are being held in pre-trial detention while 15 per cent are convicted prisoners. This is certainly a very disturbing situation which has, moreover, come to the attention of the Ministry of Justice, which has established an Office of Pre-trial Detention Supervision at the National Penitentiary in Port-au-Prince and plans to extend the programme to other detention centres. On the instructions of that Office, justices of the peace visited the prison regularly between 29 May and 8 July, and 190 of the 300 prisoners whom they interviewed were released. According to a MICIVIH memorandum, several judges were surprised to discover detainees for whom they had issued arrest warrants in 1997 and whose cases had never been heard or brought to trial. Equally praiseworthy is the excellent work of MICIVIH, which is helping to correct and update the information contained in individual files, prison registers and computerized lists. However, it must not be thought that this Office will solve the problem of long-term detention, which is the result of shortcomings in the judicial system itself. In view of the magnitude of this task, the expert strongly recommends that the international community should spare no effort to ensure implementation of the plan of action for the justice system. It is important to remember that peace, democracy and development require the establishment of an independent judicial system accessible to all. Until the justice system is made a priority, there can be no hope of satisfactory results for the economic and social development of the Haitian people.

VI. Women's rights

23. Violence against women remains a major concern of women's rights organizations such as Kay Famm (a Creole expression meaning "Women's House"). Kay Famm's activities focus on four programmes: rehabilitation of women victims of violence; women and democracy; training; and self-financing of microprojects. In November 1997, 80 women's organizations of Haitian civil society established an International Tribunal for the Elimination of Violence against Haitian Women. The theme of the organizations involved was: "Let's remove the gags": no one will realize the extent of violence against women unless people talk about it. The progress of the "trial" has been a success from the point of view of the mobilization of women and of the press and has proved to be a turning point. For three days, the "Tribunal" sessions made society realize that the problem of women's rights is one of human rights, thereby sparking genuine awareness.

24. Without wishing to deny the Haitian Government's efforts on behalf of women, human rights activists are in unanimous agreement that much still remains to be done. Attention has been drawn to shortage of staff and equipment of the Ministry of Women's Affairs. Despite the existence of a protocol between the Ministry of Justice and the Ministry of Women's Affairs, there appears to have been no adequate judicial response to violence against women. There are serious flaws in police procedures and practices with respect to crimes of a sexual nature and to the protection of women victims of crimes of violence, who very often remain silent because of their lack of resources, mistrust of the judicial system and fear of retaliation. The forms of violence which affect women and, in particular, young girls, are domestic and sexual in nature; they also affect disabled women.

25. Although political violence disappeared from the Haitian scene with the return to democracy, it might be asked whether domestic violence, which is considered a private matter, does not have a political dimension. If violence is structural, it is no longer private, but rather political, insofar as men are supported by patriarchal logic. It should be noted that the decree of 8 October 1982 demolished the original male superiority affirmed in the Civil Code of 1826. Nevertheless, as the Kay Famm spokesperson has stressed, judges often blame a woman's rape on her "sex appeal" and wife-beating on the victim's "disobedience" or remarks to her husband. In other words, the victim is presumed to be at fault and responsible for the harm done to her. The expert welcomes the decision of her colleague, Radhika Coomaraswamy, Special Rapporteur on Violence against Women of the Commission on Human Rights, to travel on mission to Haiti in November 1998.

26. The independent expert recommends that article 262 of the Penal Code, which prohibits and penalizes abortion, should be amended. The proposed amendment consists of

authorizing abortion in cases of rape or incest or where the mother's health is at risk. He also recommended that the flaws in articles 285, 286 and 287 of the Penal Code, which make women and men subject to different penalties for adultery, should be corrected. Spouses are only partially equal in cases of adultery, since a husband's murder of a wife caught *in flagrante delicto* of adultery in the conjugal home is considered pardonable. Similarly, in the case of a woman convicted of adultery, the civil judge is authorized not only to grant a divorce but to sentence her to prison.

27. Legislators should also endeavour to recognize women's rights in cases of *plaçage* (Haitian common law marriage) and concubinage, which are widespread in rural areas. These legislative matters should be the subject of a comprehensive study of the compatibility of the provisions of Haitian legislation with the international instruments ratified by Haiti, particularly the Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará).

28. The independent expert recommends that a sensitivity course on the problem of violence against women should be included in training programmes for judges and lawyers. In reality, sensitivity to the rights of women as human rights should be incorporated into all levels of the educational system. The need for such a policy is demonstrated by the fact that violence against women is considered normal in Haitian society; for that reason, this type of violence has always been trivialized, even by State institutions.

29. The Government and the international community should support the actions of women's groups, which are breaking the silence with increasing frequency. Prosecutor's offices receive very many complaints by women victims of violence which, unfortunately, are not followed by investigations which might lead to the arrest and trial of those responsible for these crimes, which are an assault on human dignity. Under the de facto regime, women victims lived through tragedies which have had lasting effects.

VII. Rights of the child

30. The problem of *restaveks* (child servants) persists and will continue to do so until poverty is eliminated in Haiti. Even more alarming is the increase in the number of street children, particularly *restavek* girls.

31. According to a United Nations Children's Fund (UNICEF) study, the situation of street children is a direct result of the increasing poverty of rural dwellers, the exodus from rural areas and the resulting overpopulation of urban centres. It should be noted that this problem worsened significantly following the *coup d'état* of September 1991.

32. Although Haiti has ratified the Convention on the Rights of the Child, it has yet to harmonize it with domestic law. The independent expert has noted provisions of both the Civil and Penal Codes which violate the rights of the child.

33. At his meeting with Mr. Rodolfo Matarollo, Deputy Executive Director of MICIVIH, he gained a better understanding of parental authority in Haiti from the point of view of the rights of the child in the light of article 15 of the provisions on parental authority in the decree of 8 October 1982:

> "Art. 15 – The father and mother, or whoever has custody of the child, may commit him or her to a rehabilitation centre or, if there are sufficiently serious grounds, to a detention centre for a period not to exceed six months and to be determined by the dean and the Public Prosecutor's Office."

34. This provision is, to say the least, surprising and, indeed, so shocking that the question of its conformity with the Constitution and the international human rights treaties ratified by Haiti must be raised. How can a person be detained in violation of the principle of *nullum crimen sine lege*? This principle is set forth in articles 24.1 and 24.3 (a) of the Haitian Constitution. Furthermore, it has a force greater than that of legislation because it also derives from article 40.2 (a) of the Convention on the Rights of the Child: "States Parties shall, in particular, ensure that: (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed".

35. Mr. Matarollo has rightly stated that mere failure to observe the respect due to parents (article 314 of the Haitian Civil Code) is not sufficient to justify, in violation of the principle of *nullum crimen sine lege* (article 4 of the Haitian Criminal Code) either an act such as a security measure (committing a child to a rehabilitation centre) or recourse to detention. In addition to the principle of *nullum crimen sine lege*, the question of the guarantees of due process arises. Under article 15 of the decree of 8 October 1982, a child may remain in a detention centre for six months without benefit of the judicial guarantees recognized in articles 12 (2) and 37 (b) of the Convention on the Rights of the Child:

"... the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law" (art. 12, para. 2);

"States Parties shall ensure that: ... No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time" (art. 37 (b)).

36. Even more serious is the fact that article 15 is applicable even to an adult whose parents petition the court, which creates a doubly illegal situation. For example, in some cases individuals have been detained in the Gonaïves prison for periods of between two and nine months. The age of these detainees varies from 23 to 34. In some cases, they were placed in detention at their parents' request on various grounds, including behaviour which places the mother's life at risk, damage to the father's property, drug use and alcoholism.

37. One judge reportedly explained his actions by characterizing such detentions as "extrajudiciary", related to Haitian "custom" and intended to protect family members from the children since the police are unable to respond rapidly to urgent situations of domestic violence. It seems that some judges also fear for their own safety (retaliation by the family) if they refuse to send a child against whom a complaint has been lodged to prison and the latter subsequently commits an act of violence. In the opinion of the independent expert, nothing can justify this practice of illegal, arbitrary detention, and it is important for the Haitian State to repeal article 15 of the decree of 8 October 1982 without delay and for those held in detention under this practice, which is in violation of the Haitian Constitution and of international law, to be released.

VIII. Conclusion

38. There is no question that the situation of human rights in Haiti has improved, despite the threats that exist to the stability of the country. It is urgent for political figures to abandon their delaying tactics and to be willing to agree on their common goal of restoring the full dignity of the Haitian people. It is time for them to allow President Préval to exercise his Constitutional right to appoint a Prime Minister, for a Government to be rapidly established and for everyone to get to work. The Haitian people are tired; they yearn for justice and aspire to economic and social development. They have suffered for too long from the policies of politicians and are demanding to take their destiny into their own hands. But it is also important for the international community to increase its support in all areas, of which, in the view of the independent expert, the most important remains justice, which is the cornerstone of a State under the rule of law. The independent expert therefore regrets the decision of the Office of the High Commissioner for Human Rights to transfer its cooperation activities to MICIVIH. He received this news unofficially on his return from Haiti. The situation is all the more disturbing because he had informed the Minister of Justice of the return of the project manager, scheduled for 4 March 1998, and, at the latter's request, had asked the Minister to prepare for the holding of jointly agreed-upon human rights training seminars in late March and late June 1998. In any case, the independent expert invites the Office of the High Commissioner for Human Rights to consider the consequences of its decision. While it is true that MICIVIH is doing remarkable work in Haiti, it is important to bear in mind that its mission is different and that the limitation on the length of its mandate will make it impossible for it to undertake follow-up to the project. The visible presence of the Office of the High Commissioner is particularly desirable in view of the shortage of human resources in the various ministerial departments. President Préval has given strict orders that a considerable number of human rights treaties should be referred to the Haitian Parliament for ratification and that Haiti should submit its report to the Human Rights Committee as soon as possible. The day after his meeting with the independent expert, President Préval agreed to the former's request, supported by MICIVIH, for recognition of the competence of the Inter-American Court of Human Rights. In the face of such political will, it is important to demonstrate the international community's commitment to strengthening Haitian expertise in the field of human rights.